

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re	*	
	*	
LUIS A. FREIRE ROLON	*	
NANCY I. PEREZ ARROYO	*	Case No. 04-08508 (ESL)
	*	
	*	Chapter 7
	*	
Debtors	*	No Asset
	*	

**UNITED STATES TRUSTEE'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The United States Trustee, by and through the undersigned counsel, and in compliance with the order entered on November 9, 2007, hereby submits his proposed findings of fact and conclusions of law in relation to the United States Trustee's *Motion to Dismiss Pursuant to Section 707(b) of the Code* (DN 20) scheduled for an evidentiary hearing to be held on January 29, 2008, at 10:30 a.m.

Proposed Findings of Fact

1. The debtors filed a voluntary petition under Chapter 7 of the Code on August 13, 2004 *Ref.* Docket No. 1.
2. The first Section 341 meeting of creditors was scheduled for September 16, 2004, but was rescheduled for October 28, 2004 as a result of the change in the appointment of trustee. *Ref.* Docket Nos. 2 and 4.
3. The complaints deadline was November 15, 2004; however, on December 1, 2004, the Court extended the complaints deadline for sixty days, at the request of the United States Trustee, until January 14, 2005. *Ref.* Docket No. 12.

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4. On January 12, 2005, the United States Trustee filed a *Motion to Dismiss Pursuant to Section 707(b) of the Code*. **Ref.** Docket No. 20.

5. Debtors marked in their bankruptcy petition that the nature of their debts is consumer/non-business.

6. The debts listed in debtors' Schedule D amount to \$319,998.45, of which \$289,500 arises from the secured liens on real property listed in Schedule A, and \$30,498.45 from secured liens on vehicles listed in Schedule B, and are, thus consumer debt. **Ref.** Debtors' Schedule D, (Docket No. 1).

7. The debts listed in debtors' Schedule F amount to \$48,094.32. **Ref.** Debtors' Schedule F (Docket No. 1).

8. Debtors have not listed any unsecured priority on Schedule E. **Ref.** Debtors' Schedule E (Docket No. 1).

9. Debtor Luis A. Freire Rolon is employed by Nypro PR, Inc. since 1983. **Ref.** Debtors' Schedule I (Docket No. 1). Debtor Luis A. Freire Rolon has a steady source of income.

10. Joint debtor Nancy I. Perez Arroyo is a teacher employed by the Education Department at Escuela Ana Jacobas Candelas in Cidra, Puerto Rico. **Ref.** Debtors' Schedule I (Docket No. 1). Joint debtor Nancy I. Perez Arroyo has a steady source of income.

11. Debtors' Schedule I shows a payroll deduction of \$258.33 per month (Mr. Freire) for contribution to a retirement plan. Documents provided by debtors indicate that this contribution relates to a 401 (k) plan. **Ref.** Copies of payment advices provided by debtor Freire dated June 27 through October, 17, 2004, **Exhibit A**.

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12. Debtors' Schedule I shows a payroll deduction of \$310.01 per month with respect to co-debtor Freire to repay a loan from his retirement account.

13. Debtors' Schedule I shows a payroll deduction of \$287.68 per month with respect to co-debtor Perez to repay a loan from her retirement account ("prestamo de retiro").

14. The total amount of payroll deductions for contribution to a 401(k) plan and for the repayment of loans from retirement accounts is \$856.02.

15. An adjustment of the debtors' total net income in Schedule I by an additional \$856.02 per month leaves the debtors with a corrected net disposable income of \$825.78 per month. This allows the debtors to pay 103% of their unsecured debt in a 60-month plan ($\$825.78 \times 60 = \$49,546.80 \div 48,094.32 = 103\%$).

16. Debtors have not offered evidence of any particular circumstance that would make co-debtor Freire's contribution to the 401(k) retirement plan a "reasonably necessary" expense for the maintenance and support of the debtors and their family, and thus not disposable income.

17. Debtors have not offered evidence of any particular circumstance that would make the repayment of co-debtor Freire's loan taken against his retirement account a "reasonably necessary" expense for the maintenance and support of the debtors and their family, and thus not disposable income.

18. Debtors have not offered evidence of any particular circumstance that would make the repayment of co-debtor Perez' loan taken against her retirement account a "reasonably necessary" expense for the maintenance and support of the debtors and their family, and thus not disposable income.

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Proposed Conclusions of Law

1. The United States Trustee filed a timely motion to dismiss pursuant to 11 U.S.C. Sec. 707(b).
2. The totality of the debt listed is consumer debt and therefore, the requirement for relief under section 707(b) of the Code--that the "debts are primarily consumer debts"--is satisfied in this case.
3. The funds reflected in Schedule I as a monthly payroll deduction in the amount of \$258.33 for contribution to a retirement plan by co-debtor Freire, specifically a 401(k) plan, are disposable income. Debtors have not offered evidence of any particular circumstance that would make the contribution to the 401(k) retirement plan a "reasonably necessary" expense, and thus not disposable income. *In re Behlke*, 358 F.3d 429, 436 (6th Cir. 2004), *In re Croskey*, 2007 WL 1302571 (Bkrcty.N.D.Ohio), *In re Glenn*, 345 B.R. 831 (Bankr.N.D.Ohio 2006), *In re Hand*, 323 B.R. 14 (Bankr. D.N.H. 2005), *In re Harrelson*, 323 B.R. 176 (W.D.Va. 2005), *In re Keating*, 298 B.R. 104 (E.D.Michigan 2003), *In re Mendoza*, 274 B.R. 522, 524 (Bankr.D.Ariz. 2002); *In re Heffernan*, 242 B.R. 812, 818 (Bankr.D.Conn. 1999), *In re Carlton*, 211 B.R. 468 (Bankr.W.D.N.Y. 1997).
4. The funds reflected in Schedule I as a monthly payroll deduction in the amount of \$310.01 to repay a loan taken against co-debtor Freire's retirement account are disposable income. Even repayments of loans from retirement plans which employers construe to be mandatory have been held to constitute disposable income. Debtors have not offered evidence of any particular circumstance that would make the repayment of the loan against co-debtor Freire's retirement account a "reasonably necessary" expense, and thus not disposable income. *In re Behlke*, 358 F.3d

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429, 436 (6th Cir. 2004), *In re Croskey*, 2007 WL 1302571 (Bkrtcy.N.D.Ohio), *In re Glenn*, 345 B.R. 831 (Bankr.N.D.Ohio 2006), *In re Anes*, 195 F.3d 177 (3rd Cir. 1999); *see also In re Harshbarger*, 66 F.3d 775 (6th Cir. 1995), *In re Blum*, 255 B.R. 9, 15 n. 10 (S.D. Ohio 2000).

5. The funds reflected in Schedule I as a monthly payroll deduction in the amount of \$287.68 to repay a loan taken against co-debtor Perez' retirement account are disposable income. Debtors have not offered evidence of any particular circumstance that would make the repayment of the loan against co-debtor Perez' retirement account a "reasonably necessary" expense, and thus not disposable income. *In re Anes*, 195 F.3d 177 (3rd Cir. 1999), *In re Harshbarger*, 66 F.3d 775 (6th Cir. 1995), *In re Caraballo Rivera*, 328 B.R. 12 (Bankr. D.P.R. 2005).

6. Debtors' resulting disposable income after adjusting the payroll deductions to exclude co-debtor Freire's contribution to his 401(k) retirement plan, co-debtor Freire's repayment of a loan taken against said retirement plan, and co-debtor Perez' repayment of a loan taken against her retirement plan allow debtors to repay 100% of their unsecured debt. Debtors' ability to repay 100% of their unsecured debt is indicative of substantial abuse. *In re Croskey*, 2007 WL 1302571 (Bkrtcy.N.D.Ohio), *In re Mondragon*, Slip Copy 2007 WL 2461616 (Bankr.D.N.M. August 24, 2007).

7. Taking into consideration the totality of circumstances in the case of caption based on the figures provided by debtors the Court finds that the case should be dismissed pursuant to the provisions of 11 U.S.C. Sec. 707(b) due to the debtors' ability to repay their debts out of future disposable income. *In re Lamanna*, 153 F3d 1 (1st Cir. 1998).

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WHEREFORE, the United States Trustee hereby requests that he be deemed in compliance with the court order entered on November 9, 2007.

- CERTIFICATE OF SERVICE -

I DO HEREBY CERTIFY that on this day I electronically filed a true and exact copy of the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

JORGE L ACEVEDO COLON acvw@quiebras.com, acevedocolonvelezwampl@gmail.com

RAFAEL BRAS BENITEZ rbras@vvalaw.com, srosado@vvalaw.com

WILFREDO SEGARRA MIRANDA segarralaw@prtc.net, wsegarra@ecf.epiqsystems.com

JANICE M VELEZ WAMPL acvw@quiebras.com, acevedocolonvelezwampl@gmail.com

I DO HEREBY FURTHER CERTIFY that on this same date a true and exact copy of the foregoing has been *sent by regular United States mail* to debtors:

LUIS A. FREIRE ROLON
URB. CAMPO LAGO
31 CALLE CAMPO
CIDRA PR 00739

NANCY I. PEREZ ARROYO
URB. CAMPO LAGO
31 CALLE CAMPO
CIDRA PR 00739

DATED: January 18, 2008

DONALD F. WALTON
Acting United States Trustee for Region 21

MONSITA LECAROS ARRIBAS
Assistant United States Trustee

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By: s/Nancy Pujals
Nancy Pujals
Trial Attorney
USDC No. 201103

CD EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVISE# NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 6/27/04 61285 \$*1,476.21

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	191.52
					LOANS	02	143.08	9,157.12
					FONDOS UNIDOS	09	5.00	65.00
					INSURANCE	10	15.71	204.23
					MEDICAL PLAN	12	13.54	123.02
					401K PLAN	04	119.23	1,531.88
					PUERTO RICO TAX	ST	414.31	5,038.46
					ELECTRONIC DEP	ED	1,476.21	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TXBL CUR	2384.62	2265.39			
YTD GRS	TXBL YTD	30837.93	29296.05			9000.00
30837.93	TAX CUR	182.42	414.31			
	TAX YTD	2359.10	5038.46			21.60

CD EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVISE# NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 7/11/04 61639 \$*1,478.20

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	206.64
					LOANS	02	143.08	9,300.20
					FONDOS UNIDOS	09	5.00	70.00
					INSURANCE	10	15.71	219.94
					MEDICAL PLAN	12	13.54	189.56
					401K PLAN	04	119.23	1,661.11
					PUERTO RICO TAX	ST	414.31	5,452.77
					ELECTRONIC DEP	ED	1,478.20	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TXBL CUR	2384.62	2265.39			
YTD GRS	TXBL YTD	33222.55	31561.44			9000.00
33222.55	TAX CUR	182.43	414.31			
	TAX YTD	2541.53	5452.77			21.60

CD EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVISE# NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 7/27/03 52165 \$*1,417.44

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	72.00	28.510	2,052.72	LIFE INSURANCE	05	14.40	86.40
VACATION TIME	VA	8.00	28.510	228.08	LOANS	02	143.08	5,729.20
					FONDOS UNIDOS	09	5.00	25.00
					INSURANCE	10	15.71	204.23
					MEDICAL PLAN	12	13.54	103.10
					401K PLAN	04	119.23	1,300.48
					PUERTO RICO TAX	ST	414.31	785.31
					ELECTRONIC DEP	ED	1,417.44	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2280.80	TXBL CUR	2280.80	2166.76			
YTD GRS	TXBL YTD	35893.48	34263.00			9000.00
35893.48	TAX CUR	174.49	383.10			
	TAX YTD	2745.86	5785.31			21.60

EXHIBIT A

CO EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVISER NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 8/08/04 62071 \$*1,619.30

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	236.88
					FONDOS UNIDOS	09	5.00	80.00
					INSURANCE	10	15.71	251.96
					MEDICAL PLAN	12	13.54	236.54
					401K PLAN	04	119.23	1,899.58
					PUERTO RICO TAX ST		414.31	6,281.45
					ELECTRONIC DEP ED		1,619.30	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TAX CUR	2384.62	2265.39			
YTD GRS	TAX YTD	37991.97	36092.39			9000.00
37991.97	TAX CUR	182.41	414.31			
	TAX YTD	2906.38	6281.45			21.60

CO EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVISER NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 8/22/04 62482 \$*1,619.30

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	252.00
					FONDOS UNIDOS	09	5.00	85.00
					INSURANCE	10	15.71	267.07
					MEDICAL PLAN	12	13.54	240.08
					401K PLAN	04	119.23	2,178.41
					PUERTO RICO TAX ST		414.31	663.70
					ELECTRONIC DEP ED		1,619.30	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TAX CUR	2384.62	2265.39			
YTD GRS	TAX YTD	41568.59	39490.18			9000.00
41568.59	TAX CUR	182.41	414.31			
	TAX YTD	3179.99	6763.70			21.60

CO EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVISER NET PAY
1 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 9/05/04 62832 \$*1,619.28

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	267.12
					FONDOS UNIDOS	09	5.00	90.00
					INSURANCE	10	15.71	282.78
					MEDICAL PLAN	12	13.54	243.72
					401K PLAN	04	119.23	2,197.64
					PUERTO RICO TAX ST		414.31	7,178.01
					ELECTRONIC DEP ED		1,619.28	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TAX CUR	2384.62	2265.39			
YTD GRS	TAX YTD	43953.21	41755.57			9000.00
43953.21	TAX CUR	182.43	414.31			
	TAX YTD	3362.42	7178.01			21.60

CO EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVICEN NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 9/19/04 63174 \$*2,033.60

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	282.84
					FONDOS UNIDOS	09	5.00	175.00
					INSURANCE	10	15.71	298.49
					MEDICAL PLAN	12	13.54	257.84
					401K PLAN	04	119.23	2,598.60
					ELECTRONIC DEP	ED	2,033.60	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TXBL CUR	2384.62	2265.39			
YTD GRS	TXBL YTD	49587.68	47108.46			9000.00
49587.68	TAX CUR	182.42				
	TAX YTD	3793.47	8388.50			21.60

CO EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVICEN NET PAY
01 LUIS A. FREIRE-ROLON 65 201J MFG MGR. M 10/03/04 63383 \$*2,033.60

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	80.00	29.810	2,384.62	LIFE INSURANCE	05	15.12	297.96
					FONDOS UNIDOS	09	5.00	100.00
					INSURANCE	10	15.71	314.20
					MEDICAL PLAN	12	13.54	370.34
					401K PLAN	04	119.23	2,598.60
					ELECTRONIC DEP	ED	2,033.60	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.62	TXBL CUR	2384.62	2265.39			
YTD GRS	TXBL YTD	51972.45	49373.85			9000.00
51972.45	TAX CUR	182.42				
	TAX YTD	3975.89	8388.50			21.60

EMPLOYEE NAME EMP # DEPT OCCUPATION P/E DATE ADVICEN NET PAY
LUIS A. FREIRE-ROLON 65 201E TLM. PRG. M 10/17/04 63856 \$*1,619.38

EARN/ADJ/ADV	CODE	HOURS	RATE	AMOUNT	TAX/DED/BEN	CODE	AMOUNT	YEAR-TO-DATE
SALARY	SL	72.00	29.810	2,146.32	LIFE INSURANCE	05	15.12	312.48
VACATION TIME	VA	8.00	29.810	238.48	FONDOS UNIDOS	09	5.00	105.00
					INSURANCE	10	15.71	329.91
					MEDICAL PLAN	12	13.54	284.34
					401K PLAN	04	119.24	2,717.84
					PUERTO RICO TAX	ST	414.37	8,802.87
					ELECTRONIC DEP	ED	1,619.38	

CURRENT GRS	SUMMARY	FICA	STATE	COUNTY	LOCAL	OTHER
2384.80	TXBL CUR	2384.80	2265.56			
YTD GRS	TXBL YTD	54357.25	51639.41			9000.00
54357.25	TAX CUR	182.44	414.37			
	TAX YTD	4158.33	8802.87			21.60